

Executive Branch Ethics Commission
ADVISORY OPINION 10-03
September 27, 2010

RE: May the Department of Corrections accept a gift in the form of a 40mm Single Shot Launcher from a vendor under the exception to the gifts rule provided for in KRS 11A.045(1)?

DECISION: No, not in this instance, due to the concern that it would create an appearance of impropriety.

This opinion is issued in response to your June 9, 2010 request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 12, 2010 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Corrections ("Corrections") seeks to accept the gift of a 40mm Single Shot Launcher from a vendor of the agency. The current estimated value of this item is \$965.00. Corrections frequently uses this vendor for ammunition and chemical agents used in its thirteen Adult Institutions. The vendor provided the weapon as part of a non-lethal weapon demonstration at Corrections' Eastern Regional Training Center ("ERTC") which was attended by staff from Little Sandy Correctional Complex ("LSCC"), Eastern Kentucky Correctional Complex, Morehead police department, Bell County Forestry Camp, and ERTC. According to your letter, the weapon was provided by the vendor as a token of their appreciation for allowing them to conduct the demonstration, and in part due to the lengthy time for delivery of a chemical agents order placed by LSCC. You indicate that this item was not solicited by LSCC or Corrections as a penalty for the order's delivery delay, nor is Corrections' receipt of the weapon predicated on any future obligation for continued or increased requisitions. Apparently LSCC in fact recently cancelled a \$3,350 ammunition order with this vendor.

If this request for an exception to the gift restrictions is approved, you state that the item will be added to LSCC's inventory and used by trained Correctional Officers and staff, if necessary, for security issues at the complex. Primarily the item will be used in training Correctional Officers and authorized staff who receive annual training on weapons and chemical agent use. You feel that even though Corrections utilizes this vendor, that state and agency purchasing procedures are resilient safeguards against favoritism and indicate that the majority of ammunition purchases are in fact made on a statewide master agreement with a different vendor.

The relevant statute is KRS 11A.045(1), which provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

KRS 11A.010(5) further provides:

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

The Commission's long-standing interpretation of KRS 11A.045(1) prohibits state agencies (in addition to state employees) from accepting gifts, as defined above, from persons or businesses with which they do business. See, for example, Advisory Opinion 02-2 (a copy of which is enclosed), in which the Commission concluded that an agency should not accept donations of items and services from persons or businesses that were seeking to do business with that agency. While the Commission has granted exceptions to this general rule in the past, where such exemptions would not create an appearance of impropriety, these exceptions have been rare and have generally been granted due to certain unique circumstances that were involved. The current situation does not appear to involve any particularly unique circumstances. The vendor in question is one with which your agency has an ongoing relationship. While there is an aspect of goodwill in the donation of the item, there is also an aspect of marketing. The weapon was, after all, being demonstrated to Corrections by the vendor for the purpose of marketing it to the agency. The donation appears to be, at least in part, merely an extension of that marketing activity. It is for this reason that the Commission believes an appearance of impropriety would be created if Corrections' request for an exemption is granted and it is allowed to accept this gift. It could, conceivably, give an unfair advantage to this vendor, either in the form of favoritism on the part of the agency for the vendor or for the weapon itself. While the Commission appreciates the purchasing procedures that are in place to protect against such things, there is always a degree of subjectivity involved therein. Should Corrections wish to acquire an item such as the one in question, it would be best to do so through the proper acquisition process.

Executive Branch Ethics Commission

ADVISORY OPINION 10-03

September 27, 2010

Page Three

For these reasons, the Commission denies your request for an exception to KRS 11A.045(1).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Acting Chair: Ron Green

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.